

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent No. 5,784,808

Issued: 28 July 1998

Inventor: Stan Hockerson, a U.S. citizen, of Albuquerque, NM

Assignee: Hockerson-Halberstadt, Inc. (a Louisiana corporation)

FOR: "Independent impact suspension athletic shoe"

ATTORNEY DOCKET NO.: A09027US (99413.1)

Declaration of Richard E. Backus

I, Richard E. Backus, have been a registered patent attorney since 1965. My registration number is 22701.

For over 30 years I have represented Stan Hockerson in patent matters, including payment of maintenance fees. For around 18 years I have also represented Johan Halberstadt, and their company Hockerson-Halberstadt, Inc. ("HHI"), in patent matters, including payment of maintenance fees.

Since at least as early as around 1998, when the above-referenced patent issued, I have kept my docket myself. I keep my docket in a Mac Panorama Database. When a patent issues, it is my practice to enter the three maintenance fee deadlines as separate entries. As the deadline for paying a maintenance fee nears, I send a letter to my client reminding my client of the deadline and offering to pay the fee on behalf of my client. When the fee is paid, I remove the entry relating to that fee.

I was first contacted about non-payment of the second maintenance fee due in the above-referenced patent on or about 6 January 2009 by Seth M. Nehrbass, a patent attorney who is assisting Hockerson-Halberstadt, Inc. in litigation relating to the above-referenced patent.

Somehow, the docket entries for the second and third maintenance fees for the above-referenced patent do not appear in my current docket.

I have investigated what may have happened. Unfortunately, it appears that the last

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March 3, 2009

activity in this file was probably in January 2002, over seven years ago, so I cannot remember what might have occurred back then. The following information is based on my written records.

On or about 3 January 2002 I sent a letter dated 3 January 2002 to Stan Hockerson (a copy of that letter is attached hereto as Exhibit A) regarding the maintenance fee due in January 2002. Stan Hockerson authorized payment of the 4-year maintenance fee through me by sending me his check no. 3219 dated 12 January 2002 (copy attached as Exhibit B). The 4-year maintenance fee was then paid on 18 January 2002.

I have found a copy of my docketing database that was saved on June 12, 2008. It is the earliest that I could find. I did a sort of the Client field for H.H.I. from which I produced the accompanying printout (Exhibit C) showing only three entries at that time for this client.

Also enclosed is a printout (the one with six entries - Exhibit D) of my current H.H.I. database which has additional entries for the three maintenance fees due in U.S. Patent No. 7,111,415, which issued last September.

I believe the two docket records will support the proposition that for the client's U.S. Patent No. 5,784,808 I had entered all three dates for paying maintenance fees for years 3.5, 7.5 and 11.5, and that the entry for year 7.5 was somehow unintentionally discarded through a docketing error. This appears from the following:

1. It was my practice to docket the dates for all three maintenance fees when the patent issued. This is evidenced by the two entries on the enclosure for H.H.I.'s U.S. Patent No. 6,273,827; they docket the dates for both 7.5 and 11.5 year fees. In that patent the maintenance fee for the 3.5 year was paid Feb. 14, 2005;
2. The current H. H. I. docket printout with the three due dates entered for U.S. Patent No. 7,111,415 shows that my docketing practice of initially entering all three dates for issued patents has continued up to last year.
3. Apparently the 11.5 year entry for U.S. Patent No. 5,784,808 was also deleted through a docketing error, possibly at the same time the 7.5 year entry was deleted. In my docket system it

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is possible to delete multiple entries for a single patent at one time.

I did not intentionally fail to pay the second maintenance fee in the above-referenced patent. The failure to pay the second maintenance fee in the above-referenced patent was unavoidable and was due to a docketing error.

I have been a registered patent attorney since 1965. In all those years, I have never had a docketing error relating to a maintenance fee except for the one relating to U.S. Patent No. 5,784,808.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent.

Richard E. Backus
Richard E. Backus
Patent Attorney
Registration number 22701
2792 Pillsbury Way
Wellington, FL 33414-3408
(561) 333-6591

March 4, 2009
Date

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Exhibit A - Backus Declaration

LAW OFFICES OF RICHARD E. BACKUS

Richard E. Backus
Kristin Hansen, Of Counsel

Patent, Trademark and Copyright Law
THE MONADNOCK BUILDING
685 MARKET STREET, SUITE 490
SAN FRANCISCO, CALIFORNIA 94105
Tel: 415-979-9876

info@rbackus.com
www.rbackus.com
Fax: 415-974-6199

Jan 3, 2002

Stan Hockerson
6718 Mossman Place, N.E.
Albuquerque, NM 87110

Re: Independent Impact Suspension Athletic Shoe
Patent #5,784,808
A-59987-3

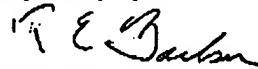
Dear Stan:

This patent has come up on our docket to remind you that the first maintenance fee must be paid by the due date of Jan 28, 2002, or the patent will lapse.

This patent issued under the "small entity" fee status on the basis that you had less than 500 employees, and that there was no other entity having more than 500 employees which had a license or other rights under the patent. If the status has changed such that any of your licensees have more than 500 employees, then we are obligated to advise the Patent Office for purposes of calculating the maintenance fee. Assuming that the small entity status of this patent is still appropriate then the costs and services for paying the maintenance fee will be \$1,030 (\$880 PTO fee plus our \$150 service fee).

Please advise if you wish us to pay the maintenance fee. If we do not hear from you by the due date we will take no further action in this matter and the patent will lapse. Because of the size of the PTO fee, we will require advance payment of the total to pay the maintenance fee on your behalf.

Very truly yours,



Richard E. Backus

Exhibit B - Backus Declaration

STAN HOCKERSON 02/01 6716 MOSSMAN PL. NE 505-875-1947 ALBUQUERQUE, NM 87110		95-648/1070 010005510	3219
DATE <u>1-12-02</u>			
PAY TO THE ORDER OF <u>Richard Backus</u>		\$ <u>1,030⁰⁰</u>	
<u>one thousand thirty dollars</u>		DOLLARS	
The Business Professionals Bank 2000 LAURENCE BLVD. NE • (505) 875-1200 ALBUQUERQUE, NM 87110			
MEMO <u>Patent re issue & renewal</u>			

Check Image - 01/22/2002

FEB DENVER 1020-0019-9 01/22/02	23058746	1210003584 165 MARKET ST. CA. 34 01/18/02 127536224 CASH	0250000002	01705	3833-06 12100358	<i>Pay to Backus of American Bank LAW OFFICES OF RICHARD E. BACKUS By Richard E. Backus</i>
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Check Image - 01/22/2002

Exhibit C - Backus Declaration

Due Date	Client	Action	File	Pat/Reg/SN Title/Mark	City/Remarks
02/14/09	H. H. I.	Maint Fee 7.5	A64613-1	6273827 Golf Putter Head	
04/21/09	H. H. I.	Maint Fee 11.5	A59873-1	5878327 Shoe Gait Adapting	
02/14/13	H. H. I.	Maint Fee 11.5	A64613-1	6273827 Golf Putter Head	

Exhibit D - Backus Declaration

Due Date	Client	Action	File	Pat/Reg/BN Title/Mark	Cty/Remarks
02/14/09	H. H. I.	Maint Fee 7.5	A84813-1	8273827 Golf Putter Head	
04/21/09	H. H. I.	Maint Fee 11.5	A59873-1	5878327 Shoe Gait Adapting	
03/28/10	H. H. I.	Maint Fee 3.5	A59890-1	7111415 Athletic Shoe Frame	
02/14/13	H. H. I.	Maint Fee 11.5	A84813-1	8273827 Golf Putter Head	
03/28/14	H. H. I.	Maint Fee 7.5	A59890-1	7111415 Athletic Shoe Frame	
03/28/18	H. H. I.	Maint Fee 11.5	A59890-1	7111415 Athletic Shoe Frame	